

ANDREA L. RIMER
404.885.3265 telephone
404.962.6669 facsimile
andrea.rimer@troutmansanders.com

TROUTMAN SANDERS

TROUTMAN SANDERS LLP
Attorneys at Law
Bank of America Plaza
600 Peachtree Street, NE, Suite 5200
Atlanta, Georgia 30308-2216
404.885.3000 telephone
troutmansanders.com

October 26, 2009

Joan E. Martin-Banks
Civil Investigator
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Peck Iron and Metal Site, Portsmouth, Virginia

Dear Ms. Martin-Banks:

Thank you for your August 7, 2009 electronic mail correspondence in response to Dominion Virginia Power's July 28, 2009 letter regarding the above-referenced site. Although we appreciate receiving the additional documents you provided in that correspondence, none support the suggestion that Dominion Virginia Power (referred to in the documents as "VEPCO") would be properly characterized as a responsible party at the site. Therefore, we reiterate the arguments provided in our July 2009 letter.

As discussed in greater detail in our July 2009 letter, neither the applicable law nor the facts support the inference that Dominion Virginia Power "arranged for disposal" of hazardous substances at the site. Dominion Virginia Power's only connection to the site was as a seller of valuable scrap metal materials, which it intended only to sell for recycling and reuse. Although there is no indication that these materials would have contained hazardous substances, the Supreme Court has determined that a party cannot be considered to have arranged for disposal of a hazardous substance unless it intended that hazardous substances be disposed of as part of the transaction in question – which was certainly not the case here. *See Burlington Northern & Santa Fe Railway Co. v. United States*, 556 U.S. ___, 129 S. Ct. 1870 (2009). The Fourth Circuit has also held that the sale of scrap metal for recycling or reclamation constitutes the sale of valuable material, and would not be considered an arrangement for disposal even where the recyclable materials contained hazardous substances. *See Pneumo Abex Corp. v. High Point, Thomasville and Denton Railroad Co.*, 142 F.3d 769, 776 (4th Cir. 1998). Dominion Virginia Power's transactions with Peck would also be exempt from CERCLA liability as bona fide recycling transactions, pursuant to the Superfund Recycling Equity Act, 42 U.S.C. §9627.

The additional documents provided by EPA in August consist of interview summaries of three former site employees (Brewster, Perry and Gottlieb), and an interview summary and declaration from Mr. David Peck. A copy of the Peck Company's 104(e) response was also included. In their interviews, none of the three former employees provide support for the

ATLANTA	CHICAGO	HONG KONG	LONDON	NEW YORK	NEWARK	NORFOLK	ORANGE COUNTY
RALEIGH	RICHMOND	SAN DIEGO	SHANGHAI	TYSONS CORNER	VIRGINIA BEACH	WASHINGTON, DC	

Joan E. Martin-Banks

October 26, 2009

Page 2

suggestion that Dominion Virginia Power arranged for disposal of hazardous substances at the site. Ms. Perry and Mr. Brewster state only that Dominion Virginia Power was a regular customer, although Mr. Brewster cannot recall what types of materials it sold to the site, and Ms. Perry states only that steel was one of the items received. Neither provides support for the proposition that Dominion Virginia Power sold or sent hazardous substances to the site in any form, and instead support the positions reflected in our July 2009 letter.

Gottlieb provides even less support for EPA's position, and only recalls obtaining bids for "boilers, generators and transformer wires," but does not recall actually bidding on any of these materials, or purchasing and receiving them at the site. In addition, to the extent Mr. Gottlieb's use of the term "transformer wires" is intended to refer to the insulated wiring contained within electrical transformers, his recollection that he even received bids for such materials appears to be inaccurate. Based on Dominion Virginia Power's available records and knowledge of its historical practices regarding the management and disposition of transformers, the company would not have removed or sold insulated wiring from its electrical transformers, nor would such insulated wiring (if it were available for sale) have been sold to scrap metal and recycling companies such as Peck Iron.

Similarly, Mr. Peck's statement that Dominion Virginia Power was a "large source of scrap" to the Portsmouth facility does not support an arrangement for disposal, even if hazardous substances were alleged to have been present, for the many reasons discussed in our July 2009 letter. Regardless, Mr. Peck's allegation that the company "sent transformers with PCBs and probably other hazardous substances" to the Portsmouth facility, is factually inaccurate and without support. Since at least the late 1950's, the repair and disposition of all distribution transformers owned by Dominion Virginia Power has been conducted through the company's Materials & Metering Services ("M&MS") Center in Richmond. The Company's available records and historical knowledge indicate that distribution transformers sold by the company for any purpose were processed through this facility, and the Company's longstanding policy has been to drain transformers of oil prior to sale to third parties.

Moreover, the Company's used transformers available for resale would have been segregated from scrap metal collected for recycling, and would have been sold after receiving bids from only a predetermined set of companies deemed qualified to purchase and manage such materials. Given the nature of Peck Iron's operations and the Company's historical use of Peck for scrap iron and steel recycling, it is unlikely that it would have been a bidder for Dominion Virginia Power's used transformers. In addition, the M&MS Center's location in Richmond would have made it very unlikely that any transformers or other materials sold through the M&MS Center would have been transported to Peck's Portsmouth facility.

Based on our review, the documents provided to us by EPA in response to our July 28, 2009 letter do not support EPA's previously stated belief that Dominion Virginia Power arranged for disposal of hazardous substances at the site. Therefore, we respectfully request that EPA not

Joan E. Martin-Banks
October 26, 2009
Page 3

include Dominion Virginia Power on any future correspondence or lists of potentially responsible parties with respect to the site.

Sincerely,

A handwritten signature in black ink, appearing to read 'AR', followed by a horizontal line extending to the right.

Andrea L. Rimer

cc: Clay Burns, Esq.